

## **REMARKS**

Claim 8 has been amended to correct a typographical error. No claims have been added. Claims 1-41 are pending. Claims 17-19, 22-28 and 33-34 have been withdrawn as directed to non-elected species, but are subject to reintroduction as explained below.

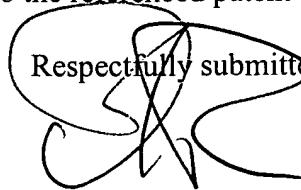
It is noted that the subject Action sets forth the claim numbering in the same fashion as US publication 2004/0143864, even though such publication is indeed a continuation of an earlier-filed application which included different claims 1-18. Applicants have maintained the numbering employed by the Examiner as set forth in the published application, and assumes that such claims are therefore considered “original” claims. If Applicants are incorrect in the foregoing regard the Examiner is requested to advise.

The Examiner characterizes the present Action as a restriction and not an election of species. This statement is neither understood nor agreed with, and, hence, further explanation of the distinction is requested. In Applicants’ representatives experience the present Action appears to simply be a common, albeit patentably distinct, election of species and the Examiner’s distinction is not understood. Thus, Applicants certainly agree that the species are patentably distinct and do not traverse the Examiner’s statements in this regard.

For examination purposes, Applicants elect a muscle specific promoter. The claims that read on this species are 1-16, 19-21, 29-32 and 35-41. Applicants have withdrawn claims 17-19, 22-28 and 33-34, subject to reintroduction upon and indication of allowability of one or more claims.

The Examiner is invited to contact the undersigned attorney at (512) 536-3055 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

  
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